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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Implementation of the Pay  
Telephone Reclassification and  
Compensation Provisions of the  
Telecommunications Act of 1996

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CC Docket No. 96-128

REPLY COMMENTS OF GATEWAY TECHNOLOGIES, INC.

Gateway Technologies, Inc. ("Gateway"), by its attorneys, submits these reply comments in opposition to the request by the Inmate Calling Services Providers Coalition ("ICSPC") for special per-call compensation requirements for "inmate only" payphones calls or, alternatively, for preemption of state rate caps on inmate telecommunications services.<sup>1</sup>

INTRODUCTION AND SUMMARY

The ICSPC is a collection of independent payphone owners that has for years been seeking regulatory guarantees of higher returns on their payphone investments. Yet the ICSPC proposals have received no support from the rest of the inmate services industry, including the RBOC/GTE Payphone Coalition ("RBOC Coalition"), and are manifestly inconsistent with the public interest. As Gateway has urged since 1996, the ICSPC approach is an unjustified, unsubstantiated windfall that should be rejected by the Commission under Section 276 of the Telecommunications Act of 1996.<sup>2</sup>

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<sup>1</sup> Public Notice, DA 99-841 (released May 6, 1999) ("Public Notice").

<sup>2</sup> 47 U.S.C. § 276. See Gateway Reply Comments, CC Docket No. 96-128, at 2 (filed July 15, 1996) ("Gateway 1996 Reply Comments").

## DISCUSSION

The Commission rejected the ICSPC's \$0.90 inmate payphone surcharge proposal in 1996, and nothing has changed since then to make its plan any more palatable.<sup>3</sup> The ICSPC's recent *ex parte* filing purports to show that independent payphones are not making money in inmate installations,<sup>4</sup> yet these materials are so fraught with mistakes and logical flaws that they merit no weight from the Commission. More importantly, as MCI WorldCom explained, if state-imposed inmate services surcharge limits "are as onerous as [ICSPC] suggests, no carrier would be willing to bid for contracts to service inmate populations."<sup>5</sup>

The fact is that the inmate telecommunications market is highly competitive. Many equipment providers and carriers constantly battle to win state and local bidding contests for the rights to serve correctional institutions. The state-imposed rate caps, typically incorporated into correctional institution RFPs, are known to all parties before they decide to compete for the contract. In a very real sense, the ICSPC petition is merely a plea that the federal government — using a problematic and likely unlawful interpretation of Section 276 — provide higher profits for deals that the small independents represented by ICSPC now wish they could forget about and "do over."

Nothing in the Communications Act or Commission policy permits Section 276 compensation decisions to trump previously executed contracts that were the product of vigorous market competition. As the RBOC Coalition stated, "there is no justification for the imposition of extraordinary inmate payphone compensation element at the federal level."<sup>6</sup> Indeed, the Commis-

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<sup>3</sup> Gateway Comments, at 2.

<sup>4</sup> Ex Parte Filing of Inmate Calling Service Providers Coalition, CC Docket No. 96-128, (filed June 29, 1999) ("ICSPC Ex Parte Filing").

<sup>5</sup> MCI WorldCom Comments, at 2.

<sup>6</sup> RBOC Comments, at 1.

sion's basic payphone compensation rule, which it expressly extended to the inmate environment, is that contract-based compensation is by definition "fair" compensation under Section 276. Even if the ICSPC's belated efforts to show that its state contracts are unprofitable were accurate, the Commission cannot and should not bail some competitors out from under the consequences of their own bad business decisions.

More broadly, the comments in this proceeding reveal almost complete opposition — from inmate payphone providers, long-distance carriers and consumer groups — to both an additional payphone compensation element<sup>7</sup> and to removal of state inmate services rate caps.<sup>8</sup> The basic fallacy of the ICSPC approach is that, as Gateway explained in its opening comments, inmate payphone industry services are contract-based,<sup>9</sup> which brings them under the existing exemption for payphones that receive contract compensation.<sup>10</sup> The guarantee of per-call "dial around" compensation, for 800 and access code calls, does not apply to inmate payphones because inmates cannot utilize such services.<sup>11</sup> Significantly, the ICSPC does not even try to refute the Commission's decision that inmate service providers' contractual relationships preclude application of the Section 276 "fairly compensated" principles.<sup>12</sup>

Every other party to this proceeding agrees that an additional \$0.90 compensation proposed is both unnecessary and usurious.<sup>13</sup> While ICSPC claims this compensation acts as "a

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<sup>7</sup> AFSC Comments, at 1; AT&T Comments of AT&T, at 2; CBTS Comments, at 2; CURE Comments, at 8; Gateway Comments, at 2; MCI WorldCom Comments, at 3; RBOC Comments, at 1.

<sup>8</sup> CURE Comments, at 2; MCI WorldCom Comments, at 1; Gateway Comments, at 6.

<sup>9</sup> Gateway Comments, at 3.

<sup>10</sup> 47 U.S.C. §276(b)(1); CURE Comments, at 8.

<sup>11</sup> Gateway Comments, at 4; ICSPC Comments, at 6.

<sup>12</sup> ICSPC Comments, at 15.

<sup>13</sup> *E.g.*, AT&T Comments, at 2; CBTS Comments, at 2; Gateway Comments, at 2; MCI Comments, at 3; RBOC/GTI Comments, at 1. Other inmate payphone providers have expressed their dissatisfaction with the ICSPC's plans. AT&T believes there is "no reason" to "prescribe a different default payphone compensation rate for such

proxy for the additional costs borne by an [inmate] provider for completing an inmate call,” these costs are *already* included in the inmate service providers’ contract-based rates, including surcharges.<sup>14</sup> As Cincinnati Bell emphasized, the ICSPC claim that costs are not covered by their contract rates is “unacceptable and ignores the reality of providing inmate payphone service.”<sup>15</sup> Other providers are able to make ample profits without an additional \$0.90 per-call windfall; if the ICSPC members cannot, they should pick a new line of work. According to the RBOC Coalition, “regulated rates for inmate calling are adequate to ensure that PSPs receive fair compensation for inmate calls.”<sup>16</sup>

The alternative of “preemptively deregulat[ing] inmate calling rates” by eliminating state rate caps is more radical and even more baseless.<sup>17</sup> The *ex parte* submission hardly supports ICSPC’s claim that inmate payphone service providers are not “fairly compensated” for their equipment and services. Their data is deceptive because it includes only local calling rates. Inmate service providers must offer both intrastate and interstate services, including “0+” toll calls. Whether or not some local calls are below-cost, there is no argument that toll calling rates and surcharges are below cost, or that overall inmate payphone services are unprofitable. More importantly, in response to ICSPC’s claim that “providers ... are unable to even recover their costs,”<sup>18</sup> as CURE noted, “they have no one but themselves to blame.”<sup>19</sup> Inmate providers are

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[inmate] traffic.” AT&T Comments, at 2. Cincinnati Bell “opposes the establishment of a single, nationwide inmate payphone service provider compensation rate” and concluded that it would not be in the best interest of the consumer, the inmate facilities or the providers. CBTS Comments, at 2-4. MCI WorldCom comments that the ICSPC “has not provided sufficient economic or legal justification for the Commission to preempt state rate-setting authority.” MCI WorldCom Comments, at 1.

<sup>14</sup> ICSPC Comments, at 14; AT&T Comments, at 1.

<sup>15</sup> CBTS Comments, at 2.

<sup>16</sup> RBOC Coalition Comments, at 1-2.

<sup>17</sup> ICSPC Comments, at 12.

<sup>18</sup> *Id.*

<sup>19</sup> CURE Comments, at 8.

free to bid or not bid on whatever correctional facility contracts they want. If ICSPC were right, then Gateway, MCI the RBOCs and others would not be bidding on these contracts, as that would be economic suicide.<sup>20</sup> That is simply not the case.

Section 276 specifically instructs the Commission to “promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.”<sup>21</sup> Current state rate caps effectuate this goal by promoting efficiencies in the inmate telecommunications market. Gateway has argued in the past that “if the ICSPC members are in fact unable to earn a reasonable compensation under these state rate caps, they should respond to market pressures and minimize their costs and increase their efficiencies.”<sup>22</sup> CURE agrees that “[s]tates and carriers should be encouraged to offer improved services at lower user rates rather than receiving guaranteed rate supports without any incentive to improve services or lower costs.”<sup>23</sup>

It is far more efficient for the Commission to allow the states to regulate against excessive prices in the inmate services industry than to preempt state rates and effectively eliminate any incentive for providers to reduce costs and improve services.<sup>24</sup> Indeed, there is nothing preventing ICSPC from bringing complaints against specific state-imposed rate regulations to the Commission. As the RBOC Coalition discussed, “[s]tate payphone rules will be subject to review at the state level” and “absent appropriate action from state authorities, such rules can be

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<sup>20</sup> *Id.*; MCI WorldCom Comments, at 2.

<sup>21</sup> 47 U.S.C. § 276(b). “Payphone service” specifically includes “the provision of inmate telephone service in correctional institutions.” 47 U.S.C. § 276(d).

<sup>22</sup> Gateway Comments, at 6.

<sup>23</sup> CURE Comments, at 7.

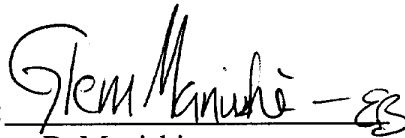
<sup>24</sup> Gateway Comments, at 7.

brought before the Commission by way of complaint.”<sup>25</sup> Any preemption issues should be handled on a case-by-case basis through the Commission’s complaint process.

### CONCLUSION

For all these reasons, the Commission should reject ICSPC’s suggested \$0.90 per-call inmate payphone surcharge and should not preempt state-imposed inmate service rate caps.

Respectfully submitted,

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<sup>25</sup> RBOC Coalition Comments at 1 n.1..

### CERTIFICATE OF SERVICE

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